Text and Expose—The New House Witch Hunt Rules

***Inside*: Roy Cohn, Matusow and the "Second Echelon" Communists**

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What Admiral Carney Did for Peace

I rise to the defense of Admiral Carney. In my opinion he may deserve the Nobel peace prize. He has done more than any single American to advance the cause of peace since Vice President Nixon a year ago in a similar off-the-record talk let the cat out of the bag on Indo-China. Nixon's call for sending U.S. ground troops to the Far East aroused so sharp a reaction as to keep us out of war in the Dienbienphu crisis and transform Nixon himself—in time for the election—into a passable imitation of a Picasso dove.

No voice for peace could have been half so effective as the glimpse Admiral Carney's off-the-record talk with a few favored reporters gave this country and the world of what the Eisenhower Administration is really thinking and where America is really drifting. Admiral Carney's purpose was to create an atmosphere of urgency in advance of the President's scheduled meetings of the following Wednesday and Thursday with Congressional leaders, like the atmosphere which was built up to push the special Formosan war powers resolution through Congress last January.

But like Dulles in leaking the Yalta papers, Carney defeated his own purpose. The President in quiet talks with Congressional leaders might have won their agreement to a definite commitment to the defense of Quemoy and Matsu. This has been a major aim of the pro-war crowd in Pentagon and State Department; the islands were specifically named in the original draft of the Formosan resolution; the wavering Eisenhower would feel less queasy about such a commitment if he could win Democratic support to it in advance. It was felt that his purpose in arranging these Congressional conferences was not—as the headlines implied—to discuss the possibilities of a Four Power meeting but to feel out the temper of Congress on Quemoy and Matsu.

Too Shocking in Black and White

It was Admiral Carney who upset the apple cart. His briefing spelled out too clearly in advance the trap into which Congress was being led and the consequences. Put into black and white, these were too bloodthirsty. The inspired stories said the Congressional leaders might already be confronted with "a made decision," that the President was being urged by his military advisers "to destroy Red China's industrial potential and thus end its expansionist tendencies," and that this program of intervention "would require mobilization and a reversal of the retrenchments ordered in the ground forces under the 'new look' policy." The quotations are from the *New York Times* story of March 26 and these details are worth dwelling upon because they are being carefully swept under the rug while public attention is focussed on whether or not an attack on the offshore islands is expected by April 15. Here the Administration hand has been quicker than the public eye.

Neither the questions and answers authorized by Presidential Secretary James C. Hagerty on Tuesday nor the President on Wednesday denied that these were the inevitable and logical consequences of a decision to defend Quemoy and Matsu. If war begins over the islands, the first target will be the Chinese Communist air bases; the second, their industrial capacity; the third, their will to resist. Only an idiot would imagine that the bombing of the bases would be enough to end the war, or the smashing of industrial centers either. These are not yet too important; the country is still basically peasant; its Communist armies grew up on dispersed guerrilla warfare; atomic bombing would set off such hate of us among the common people of China that they would have ample support. Ground troops would be needed in large numbers, and so when Admiral Carney spoke of "mobilization" after the bombing of industrial facilities he was talking sound military sense, though much too frankly and with a cold-blooded readiness for the slaughter of millions which should help awaken America's numbed conscience.

Admiral Carney must have been astounded by the repercussions. Secretary of State Dulles is as ready as he to go to war over Quemoy and Matsu and the main purpose of Dulles' official visit to Canada two weeks ago was to find out how the Canadian government would react if we attacked the Chinese mainland in defense of the offshore islands. The Ottawa correspondent of the *Washington Evening Star* on March 19 quoted one member of the Canadian parliament who sat in on a Dulles briefing for MP's as saying he was "horrified" at the Secretary of State's "calm acceptance of the possibility of a world war over islands that are utterly inconsequential." This was the same mood in which Dulles on his return to New York told the United Negro College Fund on March 20 we may again be forced to "forego peace in order to assure the blessings of liberty." Admiral Carney was not wrong when he told those reporters Secretary Dulles had been supporting the "new outlook."

Awakening the Democrats

This was the second time in two weeks that a "leak" had succeeded only in leaving the perpetrator sopping wet in public. The Dulles leak of the Yalta papers had so angered the Democrats that Senator George initiated talk of a Four Power conference both Dulles and Eisenhower are anxious to avoid. The Carney leak led even the Texas Milquetoast, Lyndon Johnson, to show a little independence and suggest on the

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The Case for a New Trial Does Not Depend on the Recantation Alone

Matusow, Roy Cohn and the Trial of the "Second Echelon" Communists

One of the marks of a lying informer is that he tends to "remember" more and more as time passes. Of the infamous Titus Oates, whose wild tale of a vast Jesuit conspiracy destroyed the lives of many innocent men in Seventeenth Century England, Wigmore says in his monumental work on Evidence:

"One of the chief weaknesses in the testimony of the notorious perjurer Oates was that at his original information to [the King's] Council he failed to state facts which he afterwards testified to on the trial of his various victims; each time bringing out new facts before unmentioned."

The passage is cited in the memorandum submitted by Harry Sacher to Federal Judge Dimock in New York, asking a new trial for Elizabeth Gurley Flynn and the other "second echelon" Communists convicted under the Smith Act. The motion was filed as a result of the recantation by Harry Matusow. But the motion does not depend on the recantation alone.

In the course of the hearing, the defense demanded and obtained the introduction into evidence of Matusow's original reports to the FBI and the "witness sheets" used by the government prosecutors originally in preparing for the trial of Miss Flynn and her associates. Sacher used these and cross-examination of the Government's prosecutors to show that some of the most damaging testimony given by Matusow at the original trial did not appear in his original reports to the FBI or even in his earlier preparatory talks with the government's prosecutors. Matusow, like Titus Oates, added to the story as he went along.

Cohn Helped Him Remember

"As is conclusively demonstrated by the documents which emanated from the government itself," the defense memorandum says, "Matusow made no mention whatever of more than half of the items to which he testified at the trial, and made no mention of the most damaging portion of seven of these items in any of his reports to the FBI or to Assistant U.S. Attorney Blinder who had him in preparation prior to the time when Mr. Roy M. Cohn took him over for preparation, i.e. sometime after May 16, 1952."

The most striking bit of testimony thus added by Matusow had to do with Vishinsky's book, *The Law of the Soviet State*. This book begins by declaring that "the violent seizure of power by the proletariat . . . is the most important thesis of the Marxist-Leninist doctrine." According to Matusow's affidavit in recantation (see textual excerpts reprinted in our issue of last February 7), Roy Cohn told him that the government tried to get this book into evidence in the first Smith Act trial but was unable to lay the necessary foundation. Cohn wanted to connect it with the defendants in the "second echelon" case. To link them with Vishinsky, who was then the chief Soviet delegate to the United Nations, and Vishinsky himself with incitation to revolution, had obvious headline possibilities. This would be "hot stuff."

When Matusow's reports to the FBI and his earlier sessions with the government prosecutors were produced, this is what appeared: There was no mention of the book in Matusow's reports to the FBI. When Matusow first mentioned it to government prosecutors, he said only that the manager of the Jefferson School Bookshop had told him to push the sale of the book.

It was not until a few days before the trial opened that Matusow suddenly linked it with one of the defendants, Alexander Trachtenberg, head of *International Publishers*. Trachtenberg's firm did not publish the book. The Vishinsky book was published by Macmillan as part of the Russian translation project of the American Council of Learned Societies. Matusow said Trachtenberg told him to push the sale of the book.

The story grew straight through the trial. On July 21, 1952, Matusow testified that Trachtenberg told him to push the sale of the book because "the party should be familiar with this new concept of Socialist law." The government thereupon offered in evidence the first two pages of the book, containing Vishinsky's summary of Marxist-Leninist revolutionary doctrine.

Overnight Recollections

The defense objected. Court recessed for the night, promising to hear argument the next morning. The objections were sustained and admission of these pages barred. Immediately thereafter Matusow was asked whether Trachtenberg had said "anything else" about the book, Matusow then testified that Trachtenberg told him the book was important because it showed how socialism could be established and "diametrically opposed classes could be eliminated."

It was on the basis of this newly "remembered" remark which Matusow now says was a lie that the government argued to the jury that Trachtenberg had displayed not only "intent" to overthrow the government but knowledge that "violent seizure of authority" was an object of the alleged "conspiracy to advocate."

Matusow was a key witness for the prosecution because he was the only one who testified that any of the defendants had in any way advocated force and violence during the period of the alleged conspiracy from 1945 to 1951. Since a conspiracy was alleged, this readiness to advocate violent means was allowed in evidence against all the defendants. Here are samples of Matusow's testimony against three of the defendants.

How the Stories Grew

William Blake Charney: Originally Matusow reported to the FBI only that Charney suggested he help set up a Communist party newspaper in Puerto Rico and arrange for the sending of a Puerto Rican delegate to the World Youth Festival in Budapest. The story subsequently grew to the point where Matusow testified that Charney talked to him about destroying U.S. military bases in Puerto Rico and crippling the Caribbean defenses of the U.S.

Henry Winston: In October, 1951, Matusow reported to the FBI that Henry Winston made a speech in Philadelphia discussing the need for Communist party members to "go out into basic industry as was done in the 30's" and that on the way home to New York Winston discussed with him the "party's role in the Progressive Party."

But when Cohn the following June began to prepare Matusow for testimony, the story significantly expanded. Now Matusow was ready to swear that Winston said Communists had to go into basic industries "so that in the event of war with the Soviet Union we would have people on our side to cut off production for the capitalists."

Pettis Perry: Matusow testified at the trial that Pettis Perry, another of the "second echelon" Communists, said that only by overthrowing capitalism and establishing a dictatorship of the proletariat could a Negro nation be established in the Black Belt. The defense memorandum points out that this version of what Perry said appears in none of the prior reports or documents until it turns up in Roy Cohn's "witness sheet" on June 10, 1952.

The defense argues that Matusow's recantation is corroborated by the government's own documents, that without his testimony there would have been no evidence of any advocacy of violent means during the period of the alleged conspiracy, and that the circumstances—the Korean war was then on—and the nature of his testimony made it highly inflammatory and prejudicial.

When argument began on the motion for a new trial, Judge Dimock said he would be guided in his decision by the opinion in the Larrison case (*24 F 2d 82*). The requirement for a new trial when a government witness has recanted was there stated as whether without the false testimony "the jury *might* have reached a different conclusion." (Italics in original.) This is what Judge Dimock will soon decide.

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Smith of the "Smith Act" Uses the Steamroller to Put Over a Fake Reform

The New Doyle Resolution Leaves Witch Hunt Abuses Untouched

This is the third year the House of Representatives has been debating reform of Congressional investigating committee abuses. Extensives hearings were held last year. This year the Democratic leadership decided to throw public opinion a sop. Hearings were held before the Rules committee under Howard W. Smith of Virginia and a resolution reported by Clyde Doyle, California Democratic member of the House Un-American Activities Committee. Three years of labor could not have brought forth a less impressive mouse.

The way the resolution was handled was typical. The hearings were not printed. No report was made to the House. Smith, as chairman of the Rules committee, brought it up for a vote on the afternoon of March 23 on a "take it or leave it" basis. Debate was sharply limited, amendment from the floor barred. Two Republicans, Hugh Scott of Pennsylvania and Keating of New York, were bitterly critical of the bill. The Northern liberal Democrats sat silent. It passed, steamroller style, without a record vote.

The ordinary newspaper reader is led to believe that the House has "reformed" its procedure. This resolution makes little or no change in present practices. It leaves untouched the evil which allows a Congressional investigating committee to act as a public grand jury which can destroy reputations in the course of "investigating" a new kind of crime too vague to be definable—the holding of "un-American" or "subversive" ideas dangerous to "internal security."

As ammunition in the fight for more fundamental reform later, we print below Congressman Scott's sharp analysis of the new rules, an examination of the fallacy that "executive sessions" necessarily protect accused persons and the text of the Doyle resolution.

A Liberal Republican from Philadelphia Assails It As A Fraud

"MR. SCOTT (Hugh D. Scott, Jr., R., Pa.). This resolution is a triumph of innocuous inconsequence . . . The Doyle resolution is totally inadequate to curb the abuses of congressional investigating committees. Far from being the conscience of the House it is a sop designed to head off effective legislation . . .

"The pitifully inadequate Doyle resolution is powerless to prevent any of the following abuses, all of which have been the subject of widespread criticism:

"First. It would allow a committee to circulate 'derogatory information' from its confidential files without notice to the individuals concerned and without giving him an opportunity to explain or deny the defamatory material.

"Second. It would allow a committee to make public defamatory testimony given at an executive session without notice of hearing to the person defamed.

"Third. It would allow a committee to issue a public report defaming individuals or groups without notice or hearing . . .

"Sixth. It would not allow a person under investigation to cross-examine a witness accusing him at a public hearing.

"Seventh. It would not entitle a witness even to 24 hours' advance notice of a hearing at which his career or reputation would be at stake . . .

"Tenth. Finally, and most important, it would not prevent the committee from sitting as a legislative court, trying guilt or innocence of individuals, or inquiring into matters wholly unrelated to any function or activity of the United States Government.

"The Doyle resolution will only create false hopes and divert attention from the pressing problem of committee reform. It should be decisively rejected by the House of Representatives.

Is It Always A Safeguard to Be Heard in Executive Session?

The new rules provide that "if the committee determines" that testimony will defame anyone, it shall receive such evidence in executive session.

Congressman Scott, in the resolution (HR 447, 83rd Congress) he introduced last year, provided instead "No witness shall be compelled to give oral testimony before an executive session if, prior to testifying, he demands to be heard in public." In a Virginia Law Review article put into the Congressional Record during the debate (see column 3, p. 3030, Cong. Rec., March 23), the Congressman explained:

". . . the executive session is potentially a device of oppression. It can be used purely as a dress rehearsal for an ensuing public spectacle. In secret, the witness may be pounded to pieces by lengthy and intensive grilling—with every reply given under oath and recorded against him—until whatever charge the committee is trying to develop has been woven into the record in its worst possible light. Then the curtain is raised and the witness is put through the same process again, bound now, at the risk of perjuring himself, to stick by his earlier replies, but under the terrible disadvantage of having only the most damning and accusatory lines of his earlier testimony brought out again. Or the committee may, at its election, merely release the secret transcript."

Congressman Keating (R., N.Y.), who called the Doyle resolution little more than "a faint first gesture in the direction of fair play," made the same point about executive sessions, citing "a danger that the secret hearing may be used as a truly terrible reincarnation of the star chamber."

Text of the New Rules Governing House Investigating Committees

"Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which shall be not less than two.

"The chairman at an investigative hearing shall announce in an opening statement the subject of the investigation.

"A copy of the committee rules, if any, and paragraph 25 of rule XI of the House of Representatives shall be made available to the witness.

"Witnesses at investigative hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

"The chairman may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt.

"If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—

"(1) receive such evidence or testimony in executive session;

"(2) afford such person an opportunity voluntarily to appear as a witness; and

"(3) receive and dispose of requests for such person to subpena additional witnesses.

"Except as provided [above] the chairman shall receive and the committee shall dispose of requests to subpena additional witnesses.

"No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee.

"In the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The committee is the sole judge of the pertinency of testimony and evidence adduced at its hearing.

"Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the committee."

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In the Mail Bags of Congress Peace May Yet Be Saved

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Senate floor that maybe Knowland was a warmonger. More manfully, by Wednesday, though still clinging to Eisenhower's coat-tails, Kefauver declared "there are forces in his administration so powerful and apparently so eager for a war with China that they are becoming impossible to resist." The Carney leak on top of the Dulles leak had for the first time in months pushed the Democratic party into the semblance—still weak and wavering—of being a peace party. If only a few more brasshats will talk their heads off and their hearts out, maybe we can get somewhere.

The Democrats Were Had

It is a pity there is no third party in Congress to rise and point out what has also been left naked in the wake of Carney's off-the-record talk—the fact that the Democrats were prize suckers and willing dupes last January when they gave Eisenhower the blank check war powers to defend these offshore islands—the check they are now protesting when Carney indicates the Administration is preparing to cash it. Carney said in that famous briefing that Formosa "could not be taken by the Reds for a couple of years if the islands were lost" and Hagerty said a few days later "there's no evidence of a sufficient buildup at this time" even for an attack on Matsu. So why was it necessary last January to rush through the special war powers resolution? If attack on Formosa is still several years off, even in Carney's opinion, what need was there to throw a monkey wrench in the Chou-Hammarskjold negotiations with an alarmist resolution threatening preventive atomic war against China just when the ice was being broken?

The answer is that East and West the Eisenhower Administration, like Truman's before it, does not want to negotiate. Period. The situation is dangerous because while the men here who want war know what they want and are determined to get it, the men who want peace don't want it enough to face the cry of "appeasement" which will follow any successful negotiation. The advocates of war with China think the longer it is postponed the harder it will be to win. They think the time to smash China is now before its industrialization transforms it into one of the great powers and demonstrates to Asia that a colonial people can create its own capital out of its own labor and sufferings without courting the finicky, undependable and haughty foreign investor. When the war-hawks hear French Premier Faure talk of admitting Communist China to the UN, they fear that if war does not come soon, the stabilization of the Far East on a basis of co-existence will become unavoidable. This is what gives that shrill urgency to their voices.

Not Much of a Peace Party

As against the mad if realistic savagery of the pro-war party (mad because our homes, too, will be destroyed in the holocaust), the peace party hardly deserve the name. They believe that if they can ignore the revolution long enough it will curl up and die, the wan victim of a prolonged snub. They don't want war, but they don't really want peace, either, not peace in the full meaning of the term. They oppose negotiation because negotiation involves some recognition of China and some stabilization. At the least it would entail the lifting of our trade embargo against China and the relinquishment of the offshore islands and the sabotage-espionage operations which both U.S. and Chinese Nationalist personnel admittedly have been carrying on for them. The new regime would be free for the giant task of reconstructing China. This—and not aggression—is what they fear.

What hampers the Democrats in this situation is that they don't really favor negotiation, either, and even their braver spirits must echo the prevalent demonology which makes clear thinking impossible in American politics. Now is the time to prod them hard; a sufficient backlash from the country in the mail bags of Congress may yet save the peace of the world. Without that pressure, Dulles will find a way to frustrate the European demand for a Four Power conference; he dreams of a German army in being with which to dictate a "rollback" to the Russians. Without that pressure, we will continue to drift toward war with China. Each day that passes makes "disengagement" more difficult. Now is the time to act before we make the greatest mistake in our national history, one that can bleed our country white, squander its wealth and destroy its blessings. The good men in this capital are weaklings, the bad are strong and quite mad.

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